

## § 1951.254

(1) The borrower has the legal capacity and financial ability to obtain other credit.

(2) Other credit is available from a commercial lender at reasonable rates and terms. In the case of Labor Housing (LH), Rural Rental Housing (RRH), and Rural Cooperative Housing (RCH) Programs, reasonable rates and terms must also permit the borrowers to continue providing housing for low and moderate income persons at rental rates tenants can afford considering the loss of any subsidy which will be canceled when the loan is paid in full.

(d) The Agency will enforce borrower graduation.

## § 1951.254 [Reserved]

## § 1951.255 Nondiscrimination.

All loan servicing actions described in this subpart will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or physical or mental handicap.

## §§ 1951.256–1951.261 [Reserved]

## § 1951.262 Farm Credit Programs—graduation of borrowers.

(a)–(d) [Reserved]

(e) *Graduation candidates.* Borrowers who are classified “commercial” or “standard” are graduation candidates. At least every 2 years, all borrowers who have a current classification of commercial or standard must submit a year-end balance sheet, actual financial performance information for the most recent year, and a projected budget for the current year to enable the Agency to reclassify their status and determine their ability to graduate.

(f) *Sending prospectus information to lenders.* (1) The Agency will distribute a borrower’s prospectus to local lenders for possible refinancing. The borrower’s permission is not required, however, the borrower must be notified of this action.

(2) The borrower is responsible for any application fees. The borrower has 30 days from the date the borrower is notified of lender interest in refinancing to make application, if required by the lender, and refinance the FLP loan. For good cause, the borrower may be granted a reasonable

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amount of additional time by the Agency.

[61 FR 35927, July 9, 1996, as amended at 62 FR 10120, Mar. 5, 1997]

## § 1951.263 Graduation of non-Farm Credit programs borrowers.

(a)–(b) [Reserved]

(c) *The thorough review.* Borrowers are required to supply such financial information as the Agency deems necessary to determine whether they are able to graduate to other credit. At a minimum, the financial statements requested from the borrower must include a balance sheet and a statement of income and expenses. Ordinarily, the financial statements will be those normally required at the end of the particular borrower’s fiscal year. For borrowers who are not requested to furnish audited financial statements, the balance sheet and statement of income and expenses may be of the borrower’s own format if the borrower’s financial situation is accurately reflected. The borrower has 60 days for group type loans and 30 days for individual type loans to supply the financial information requested.

(d) [Reserved]

(e) *Requesting the borrower to graduate.* (1) The Agency will send written notice to borrowers found able to graduate requesting them to graduate. The borrower must seek a loan only in the amount necessary to repay the unpaid balance.

(2) Borrowers must provide evidence of their ability or inability to graduate within 30 days for RH borrowers, and 90 days for group type borrowers, after the date of the request. The Agency may allow additional time for good cause, for example when a borrower expects to receive income in the near future for the payment of accounts which would substantially reduce the amount required for refinancing, or when a borrower is a public body and must issue bonds to accomplish graduation.

(3) If a borrower is unable to graduate the full amount of the loan, the borrower must furnish evidence to the Agency, showing:

(i) The names of other lenders contacted;

**RHS, RBS, RUS, FSA, USDA**

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(ii) The amount of loan requested by the borrower and the amount, if any, offered by the lenders;

(iii) The rates and terms offered by the lenders or the specific reasons why other credit is not available; and

(iv) The purpose of the loan request.

(4) The difference in interest rates between the Agency and other lenders will not be sufficient reason for failure to graduate if the other credit is available at rates and terms which the borrower can reasonably be expected to pay. An exception is made where there is an interest rate ceiling imposed by Federal law or contained in the note or mortgage.

(5) The Agency will notify the borrower in writing if it determines that the borrower can graduate. The borrower must take positive steps to graduate within 15 days for individual loans and 60 days for group loans from such notice to avoid legal action. The servicing official may grant a longer period where warranted.

**§ 1951.264 Action when borrower fails to cooperate, respond or graduate.**

(a) When borrowers with other than FCP loans fail to:

(1) Provide information following receipt of both FmHA Guide Letters 1951-1 and 1951-2 (available in any Agency office), or letters of similar format, they are in default of the terms of their security instruments. The approval official may, when appropriate, accelerate the account based on the borrower's failure to perform as required by this subpart and the loan and security instruments.

(2) Apply for or accept other credit following receipt of both FmHA Guide Letters 1951-F-5 and 1951-6 (available in any Agency office), or letters of similar format, they are in default under the graduation requirement of their security instruments. If the Agency determines the borrower is able to graduate, foreclosure action will be initiated in accordance with § 1955.15(d)(2)(ii). If the borrower's account is accelerated, the borrower may appeal the decision.

(b) If an FCP borrower fails to cooperate after a lender expresses a willingness to consider refinancing the

Agency loan, the account will be referred for legal action.

**§ 1951.265 Application for subsequent loan, subordination, or consent to additional indebtedness from a borrower who has been requested to graduate.**

(a) Any borrower who appears to meet the local commercial lending standards, taking into consideration the Agency's loan guarantee program, will not be considered for a subsequent loan, subordination, or consent to additional indebtedness until the borrower's ability or inability to graduate has been confirmed. An exception may be made where the proposed action is needed to alleviate an emergency situation, such as meeting applicable health or sanitary standards which require immediate attention.

(b) If the borrower has been requested to graduate and has also been denied a request for a subsequent loan, subordination, or consent to additional indebtedness, the borrower may appeal both issues.

**§ 1951.266 Special requirements for MFH borrowers.**

All requirements of 7 CFR part 3560, subpart K must be met prior to graduation and acceptance of the full payment from an MFH borrower.

[69 FR 69105, Nov. 26, 2004]

**§§ 1951.267-1951.299 [Reserved]**

**§ 1951.300 OMB control number.**

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0093.

EXHIBIT A TO SUBPART F OF PART 1951  
[RESERVED]

EXHIBIT B TO SUBPART F OF PART 1951—  
SUGGESTED OUTLINE FOR SEEKING  
INFORMATION FROM LENDERS ON  
CREDIT CRITERIA FOR GRADUATION  
OF SINGLE FAMILY HOUSING LOANS

Date: \_\_\_\_\_  
Name of Lender: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Name of County Supervisor: \_\_\_\_\_  
Service Area: \_\_\_\_\_